

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

James M. Leatherwood,

Plaintiff,

Case No. 4:03-cv-00313-Y
The Honorable Terry R. Means

v.

Defense Procurement Manufacturing
Services, Inc., and Randy Luth,
Individually,

Defendants.

**DEFENDANTS DEFENSE PROCUREMENT MANUFACTURING
SERVICES, INC. AND RANDY LUTH'S
MOTION TO DISMISS DAMAGE CLAIMS UNDER FED. R. CIV. P. 37(d),
OR, ALTERNATIVELY, MOTION TO COMPEL**

Defendants Defense Procurement Manufacturing Services, Inc. and Randy Luth bring this motion to dismiss damage claims under FED. R. CIV. P. 37(d) or, alternatively, motion to compel based on Plaintiff James M. Leatherwood's failure to serve written responses to Defendants' First and Second Sets of Requests for Production of Documents and Things. The motion is also based upon the indicated rules, legal precedent, and all of the files and records herein.

Defendants Defense Procurement Manufacturing Services, Inc. and Randy Luth's Motion is further supported by their Brief in Support of their Motion to Dismiss Damage Claims under FED. R. CIV. P. 37(d) or, Alternatively, Motion to Compel, the Declaration of Aaron W. Davis and the Exhibits thereto, and the Proposed Order. Based on the materials submitted herein, Defendants Defense Procurement Manufacturing Services, Inc. and Randy Luth respectfully request that Plaintiff's damage claims be dismissed with prejudice. Alternatively, Defendants

ask the Court to order Plaintiff to serve his written responses and produce the promised documents, particularly those related to damages, within seven (7) days of the Court's Order. In either case, Defendants also ask that the Court award them expenses and reasonable attorneys' fees related to Plaintiff's failures.

Respectfully submitted,

**ATTORNEYS FOR DEFENSE PROCUREMENT
MANUFACTURING SERVICES, INC. AND
RANDY LUTH**

Dated: August 5, 2004

By: Eric H. Chadwick

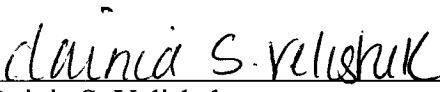
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Grant Liser (TX # 12415000)
**BROWN, HERMAN, DEAN,
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L.L.P.**
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Telephone: (817) 332-1391
Facsimile: (817) 870-2427

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendants' Motion to Dismiss under FED. R. CIV. P. 37(d) has been served via certified mail, return receipt requested, on this 5th day of August, 2004 to the following:

James M. Leatherwood
Box 140
Lingleville, TX 76461



Dainia S. Velishek